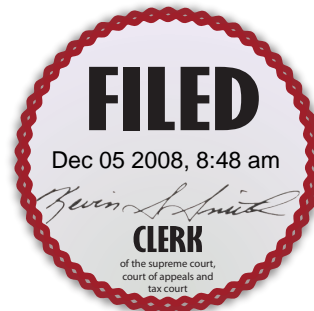


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE TERMINATION OF)
THE PARENT-CHILD RELATIONSHIP OF)
S.V. and K.V., Minor Children, and ANJANETTE)
M. HOOVER, Mother,)

ANJANETTE M. HOOVER,)

Appellant-Respondent,)

vs.)

WHITE COUNTY DEPARTMENT OF)
CHILD SERVICES,)

Appellee-Petitioner.)

No. 91A04-0805-JV-272

APPEAL FROM THE WHITE CIRCUIT COURT
The Honorable Robert W. Thacker, Judge
Cause No. 91C01-0611-JT-7 & 91C01-0611-JT-8

December 5, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Anjanette M. Hoover (“Mother”) appeals the trial court’s termination of her parental rights to her children, S.V. and K.V. Mother raises one issue for our review, which we revise and restate as whether the trial court rendered a clearly erroneous decision when it determined that the conditions resulting in the children’s removal will not be remedied and that the decision to terminate is in the children’s best interest. We affirm.

The relevant facts follow. On December 15, 2005, the White County Department of Child Services (“WDCS”) removed then nine-year-old S.V. and two-year old K.V. from Mother’s custody. The removal occurred after the WDCS received a report, and subsequently determined, that Mother and her children were homeless, that Mother was unemployed, and that Mother was unable to care for her children. At the time of the removal, Karyl Brown, a WDCS family case manager, observed that Mother was mentally unstable and that she was unable to take care of her children. As a result, the WDCS placed S.V. and K.V. in foster care.

The next day, Mother was hospitalized under an emergency mental health detention order after she appeared to be speaking to an imaginary person, admitted referring to a gun in a confrontation with WDCS workers, and was involved in an altercation with a police officer. Mother had also been hospitalized approximately eight times between 1991 and 1995 for treatment of schizophrenia or bi-polar disorder.

The WDCS initiated children in need of services (“CHINS”) proceedings, and on December 19, 2005, detention orders were entered making the children wards of the WDCS with a finding that “[i]t is in the best interests of the child[ren] to be detained, and that reasonable efforts were made to prevent the removal of the child[ren].”¹ Further, that it would be contrary to the welfare of the child[ren] to remain in the home.” Volume of Exhibits at 20-21. On December 21, 2005, the WDCS filed a CHINS petition alleging that Mother “is currently homeless, suffers significant mental health problems including delusions, paranoia, and bi-polar behavior making her unable to adequately care for the child[ren]. Currently, she is hospitalized under an emergency detention order in a mental health facility.” Volume of Exhibits at 24.

On January 5, 2006, Mother admitted the allegations of the petitions, and the children were adjudged to be CHINS under Ind. Code § 34-31-1. The CHINS dispositional decree found that Mother suffered from bi-polar and personality disorders and that she was in need of mental health services in order for her to properly care for and support the children.

On January 29, 2006, the children were placed with their maternal grandmother (“Grandmother”), where they have remained. At first, Mother exercised unsupervised visitation with the children but, at some point after she covered S.V.’s mouth with duct tape, Mother was ordered to engage in supervised

¹ Separate orders for each child, both preliminary and final, were issued in this case. The trial court, however, held joint hearings, and the matter has been consolidated on appeal.

visitation. In June of 2006, Grandmother no longer allowed Mother to come to her home, and supervised visitation was ordered to occur at other locations. In July of 2006, WDCS advised Mother that supervised visitation would continue because of Mother's inability to control her temper, because she was not attending mental health appointments, and because she continued to be homeless. Volume of Exhibits at 76.

In September of 2006, psychologist Mary M. Papandria ("Papandria") diagnosed Mother as suffering from schizophrenia paranoid type, general anxiety disorder, and personality disorder with obsessive-compulsive and narcissistic features. Papandria's report stated that Mother "appeared largely incapable of making sound decisions regarding the welfare of her children. . . and does not appear capable of parenting her children at this time" and that Mother "was unable to care for herself." Transcript at 110-11. The CHINS court held review hearings in April and October of 2007, each time concluding that reunification would be contrary to the welfare of the children and not in the children's best interest as Mother was unable to independently care for the children.

On November 15, 2006, the WDCS filed its petitions for termination of parental rights. At trial, Mother requested a further psychological evaluation by James A. Kenny, Ph.D. ("Kenny"), which the trial court granted. Kenny diagnosed Mother as paranoid schizophrenic, continuous, with prominent negative symptoms, generalized anxiety disorder, and personality disorder, with paranoid and antisocial features. Kenny also reported that Mother suspected that A.V. and

K.V. each had identical twin siblings who were being switched during visitation. Kenny further reported that Mother told him that she heard voices “without knowing where they come from.” Appellant’s Appendix at 21-26.

On April 25, 2008, the trial court entered findings of fact and conclusions of law in support of its decision to terminate Mother’s parental rights. Mother appeals that determination, and the particular findings and conclusions to which she objects are discussed below.

The traditional right of a parent to establish a home and raise her children is protected by the Fourteenth Amendment of the United States Constitution. Bester v. Lake County Office of Family & Children, 839 N.E.2d 143, 147 (Ind. 2005). However, these parental interests are not absolute and must be subordinated to the children’s interests in determining the proper disposition of a petition to terminate parental rights. Id. Parental rights may be terminated when a parent is unable or unwilling to meet her parental responsibilities. Id. The purpose of terminating parental rights is not to punish a parent, but to protect the children. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), trans. denied, cert. denied, 534 U.S. 1161, 122 S.Ct. 1197, 152 L.Ed.2d 136 (2002).

When reviewing a termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. Bester, 839 N.E.2d at 147. We will consider only the evidence and reasonable inferences therefrom that are most favorable to the judgment. Id. When reviewing findings of fact and conclusions thereon entered in a case involving a termination of parental rights, we apply a

two-tiered standard of review. Id. First, we determine whether the evidence supports the findings. Id. Then, we determine whether the findings support the judgment. Id. The trial court’s judgment will be set aside only if it is clearly erroneous. Id. “A judgment is clearly erroneous if the findings do not support the trial court’s conclusions or the conclusions do not support the judgment.” Id. (quoting In re R.J., 829 N.E.2d 1032, 1034 (Ind. Ct. App. 2005)).

Ind. Code § 31-35-2-8(a) provides that “if the court finds that the allegations in a petition described in [Ind. Code § 31-35-2-4] are true, the court shall terminate the parent-child relationship.” At the time of the trial court’s order, Ind. Code § 31-35-2-4(b)(2)² provided that a petition to terminate a parent-child relationship involving a child in need of services must allege that:

- (A) one (1) of the following exists:
 - (i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
 - (ii) a court has entered a finding under Ind. Code § 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court’s finding, the date of the finding, and the manner in which the finding was made; or
 - (iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and

² Ind. Code § 31-35-2-4 was amended effective July 1, 2008. See Pub. L. No. 146-2008, § 615.

children for at least fifteen (15) months of the most recent twenty-two (22) months;

- (B) there is a reasonable probability that:
 - (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
 - (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
- (C) termination is in the best interests of the child; and
- (D) there is a satisfactory plan for the care and treatment of the child.

The State must establish these allegations by clear and convincing evidence. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234-35 (Ind. 1992); Doe v. Daviess County Div. of Children & Family Services, 669 N.E.2d 192, 194 (Ind. Ct. App. 1996), trans. denied. The termination court is required to look at the totality of the evidence to assess parental fitness and to determine the children's best interests. In re D.L., 814 N.E.2d 1022, 1030 (Ind. Ct. App. 2004), trans. denied.

A. Conditions Resulting in Removal.

Mother first argues that the WDSCS did not prove, and the trial court could not find by clear and convincing evidence, that "the conditions that resulted in the child[ren's] removal or the reasons for placement outside the home of the parents will not be remedied." See I.C. § 31-35-2-4(b)(2)(B)(i). Specifically, Mother argues that, even though at the time of hearing she was neither financially nor

mentally able to take care of her children, “there is reason to believe the conditions leading to the children’s removal will be remedied.” Appellant’s Brief at 11.

The trial court made the following pertinent findings:

27. During the 2 years following the detention of the child[ren] in December 2005, the Mother held the following jobs:

March 2006: a few days for a legal temporary service;

April 2006: 3 days as bank receptionist until terminated because of behavior;

July-August 2006: 3 weeks as a waitress until fired because of inappropriate behavior with staff and customers;

June 2007: a few days before quitting at a retail-lighting supply company;

August-September 2007: 2 weeks as a proof reader for a temp service in Indianapolis;

October-November 2007: 5 weeks waitressing; and

November-December 2007: 10 days at a gas station.

28. [Mother] earned less than \$2,000.00 per year each of the last three years, and admits to being financially unable to care for her children since December 15, 2005. . . .

* * * * *

42. To determine whether a reasonable probability exists that the conditions satisfying the child[ren’s] continued placement outside the home will not be remedied, the Court must judge a parent’s fitness to care for her child[ren] at the time of the termination hearing and, in doing so, the Court must also evaluate the parent’s habitual patterns of conduct to determine the probability of future neglect or deprivation of the child[ren]. The court need not wait until the child[ren] [are] irreversibly influenced by a deficient life style such that

the physical, mental, and social growth of the child[ren] [are] permanently impaired before terminating the parent-child relationship. In this case, the child[ren] [were] removed in December 2005 due to [Mother's] homelessness, unemployment, and mental instability, all of which result in her inability to care for the child[ren]. Her psychiatric issues are well documented which included three emergency mental health inpatient commitments. Despite extensive services provided [to Mother], including psychiatric evaluations, psychiatric care, counseling, housing, and financial assistance, [Mother] has failed to adequately demonstrate a change in her conditions that necessitated the child[ren's] continued removal. At [the] time of trial, [Mother] was still unemployed, residing in the county home, and exhibiting long-standing behaviors associated with mental illness, all of which rendered reunification impossible. [Mother] has had two years to participate in case plans tailored for reunification, without success. Thus, there is clear and convincing evidence that there is a reasonable probability that the conditions that resulted in the child[ren's] removal from outside the home of [Mother] will not be remedied.

Appellant's Appendix at 35-36; 39-40; 50-51; 54-55 (citations omitted).

After pointing out that the children were removed from her home because of her unemployment, homelessness, and mental illness, Mother argues that the trial court clearly erred in its findings/conclusions pertaining to the first two conditions and that the inappropriate actions caused by her mental illness are less severe than described by the trial court.

Mother first argues that the trial court erroneously concluded that Mother did not have had a job at the time of the termination hearings. Mother testified during the December 2007 second hearing, however, that the job was temporary and "probably" would terminate at the end of the month. Transcript at 506. Furthermore, Mother testified that she could not support herself. Id. at 524.

Indeed, Kenny, the psychologist who conducted the post-hearing evaluation, reported that Mother was fired from the job. Appellant's Appendix at 23. Thus, it is clear that Mother could not support her children and that the trial court had evidence, in the form of Kenny's report, that Mother was unemployed.

Mother next argues that the trial court erroneously determined that she did not have an apartment at the time of the December hearing. However, Elizabeth Little, a social worker who treated Mother, testified that Mother was in the apartment only because her brother had given her some money. Furthermore, given Mother's testimony about her financial condition, it is clear that she would not be able to continue living in the apartment with her children.

Mother finally argues that she has "done better at managing her mental illness recently." Appellant's Brief at 15. Therefore, she believes that if she was given more time, she would be able to hold down a job, pay for housing, and take care of her children. In support of her argument, Mother cites to testimony by Little and by her therapist, Susan Holmes, that she is "more stable." Id. at 18.

We note that Little also testified that Mother's improvement does not mean that Mother is capable of caring for her children. Transcript at 303. Holmes testified that Mother needed to continue "to think first and act later." Id. at 329. Holmes further testified that, because of strained relationships with her family, Mother could not rely on them to give her help. Id. at 330. More importantly, Kenny, the psychologist whom Mother requested to conduct a post-hearing evaluation, concluded after that evaluation that Mother was still suffering from

“Paranoid Schizophrenia, Continuous, with Prominent Negative Symptoms, Generalized Anxiety Disorder, [and] Personality Disorder NOS, with paranoid and antisocial features.” Appellant’s Appendix at 26. Kenny reported that the “major scale that measures antisocial behavior was elevated, suggesting ‘rebelliousness, [and] disrupted family relations. . . .’” *Id.* at 25. Kenny further reported that persons showing antisocial behavior “show poor judgment, are unreliable, immature, hostile, [and] aggressive.” *Id.* Kenny also reported that Mother “clearly suffers from multiple delusions, mostly paranoid” *Id.* at 24. We conclude that, under these circumstances, the trial court’s finding of a reasonable probability that the conditions resulting in the children’s removal or the reasons for placement outside Mother’s home would not be remedied was supported by clear and convincing evidence.³

B. Best Interests.

Mother also contends that the trial court clearly erred in determining that termination was in the best interests of the children. The “best interests” determination is not an independent decision that the children will be better off with another parent. *Matter of Tucker*, 578 N.E.2d 774, 779 n. 5 (Ind. Ct. App. 1991), *trans. denied*. In determining the best interests of the children, the trial court must subordinate the interests of the parent to those of the children and, in doing so, look to the totality of the evidence. *McBride v. Monroe County Office of Family & Children*, 798 N.E.2d 185, 203 (Ind. Ct. App. 2003).

³ We note that S.V. and K.V.’s father voluntarily surrendered his parental rights.

In this case, Mother was given two years to complete services designed to achieve reunification with her children, who are now eleven and four years of age. Unfortunately, though Mother made some progress, she failed to make enough progress to warrant such reunification. As social worker, Karyl Brown, testified, “[T]he children need permanency. They cannot wait for [Mother] to be able to get on her own. They’re four and eleven and need to get settled.” Transcript at 89. As we have previously held, children should not be subjected to loss while they wait until the parent is capable of caring for them. In re Campbell, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (holding that the court was unwilling to put a child “on a shelf” after a two-year wait for her parents to become capable of caring for her appropriately).⁴ Based upon the totality of the evidence in this case, the trial court’s finding that termination was in S.V. and K.V.’s best interest was supported by clear and convincing evidence. See, e.g., In re A.H., 832 N.E.2d 563, 570 (Ind. Ct. App. 2005) (holding that termination of parental rights was in the children’s best interests due to the father’s mental health impairments, the father’s habitual pattern of conduct, the lack of a stable and suitable living environment, and the father’s failure to complete services offered to him).

⁴ We note that Mother, citing the guardian ad litem’s report, makes reference to the statutory deadline which requires the DCS to file a petition to terminate within a fixed period after the CHINS determination. See Volume of Exhibits at 205. Mother implies that this statute caused the WCDS to rush matters and to deprive her of time to stabilize. Brown’s testimony clearly indicates that it was the best interests of the children, not the statute, that primarily affected the filing of the termination petition.

For the foregoing reasons, we affirm the trial court's termination of Mother's parental rights to S.V. and K.V.

Affirmed.

BAKER, C. J. and MATHIAS, J. concur